



<b>POLICY TITLE: CONFIDENTIALITY OF RESIDENT INFORMATION</b>  <b>POLICY NUMBER: 22.2</b>  <b>CHAPTER 14: RESIDENT RECORDS</b>		<b>PAGE <u>1</u> OF <u>11</u></b>
 <b>STATE of MAINE</b> <b>DEPARTMENT OF CORRECTIONS</b>  <b>Approved by Commissioner:</b>  		<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VII</b>
<b>EFFECTIVE DATE:</b> <b>September 30, 2004</b>	<b>LATEST REVISION:</b> <b>July 11, 2016</b>	<b>CHECK ONLY IF</b> <b>APA [    ]</b>

## I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to Title 34-A M.R.S.A. Section 1403.

## II. APPLICABILITY

All Departmental Juvenile Facilities and Central Office

## III. POLICY

All resident records shall be maintained in a confidential manner and all resident information shall be kept confidential, as required by legal mandates and Department policies, to prevent unauthorized access to information that is protected. This policy shall be reviewed on an annual basis and updated as necessary.

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## VI. PROCEDURES

### Procedure A: General Rules

1. Prior to disclosure of a record or the information in a record, it shall be determined whether the record is a Department record or third party record. A Department record is a record that is generated by a Department of Corrections employee or by a person or an agency providing services to resident(s) by agreement with or under contract to the Department. A record generated by any other person or agency is a third party record. In addition, a record generated upon court order, no matter who generates it (e.g. pre-disposition investigation), is considered a third party record.
2. Unless otherwise governed by this policy, third party records and information contained in those records shall be kept confidential with the exception that third party records or information contained in those records shall be disclosed to employees of the Department and persons or agencies providing services to resident(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections.

Requests for disclosure made by other persons or agencies, including the resident or the parent or guardian of a resident, shall be referred to the party that generated the record (or to the court if it was generated upon the order of a court). However, third party records generated by the Maine State agency providing mental health services may be discussed with the resident but only by Department of Corrections mental health staff. Also, third party school records may be discussed with the resident. Copies of these mental health or school records may not be provided by the Department of Corrections to the resident or any other person or agency. Finally, if the resident, parent, or guardian has already obtained a record from the party that generated it, the third party record may be discussed with that person.

3. Unless otherwise governed by this policy, Department records and information contained in those records and information about a resident obtained through observation or report shall be kept confidential with the exception that Department records or information shall be disclosed:

- a. to employees of the Department and persons or agencies providing

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services to resident(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections;

- b. to the resident, if he or she requests such disclosure;
- c. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections – General form (Attachment A) signed by the resident, if the resident is 18 years of age or over and does not have a guardian;
- d. to a parent or guardian of the resident, if the resident is a minor or if the resident is 18 years of age or over and has a guardian and if the parent or guardian requests such disclosure;
- e. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections – General form signed by the resident and signed by that resident's parent or guardian, if the resident is a minor;
- f. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections – General form signed by the resident and signed by the guardian, if the resident is 18 years of age or over and has a guardian;
- g. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
- h. to a Maine state agency if, but only if, such disclosure is necessary to carry out a statutory function of that agency;
- i. to any criminal justice agency (at the federal, state or local level or at any level of the Canadian government) if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;
- j. to persons who directly supervise or report on the health, behavior or progress of a resident, to the superintendent of a resident's school or a school to which the resident is seeking admission and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a resident, if the information is relevant to and disseminated for the purpose of creating and maintaining an individual plan for the resident's rehabilitation, including, when the resident is reentering school, reintegration into the school;
- k. to any person or agency authorized to receive such disclosure pursuant to the determination of a hearing officer in an unemployment compensation proceeding relating to a state employee, in a state agency personnel action, or in a professional or occupational board licensure, certification, or registration proceeding, if approved by the Department's legal representative in the Attorney General's office;

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- l. to persons engaged in research, if approved by the Commissioner, or designee, and if identifying data is not disclosed by the researchers;
  - m. to victims as provided in this policy and other Department policies; and
  - n. to the Governor's office, a legislative committee, or a legislative study commission, if approved by the Commissioner, or designee. Information shall not be disclosed to an individual legislator without an appropriate authorization form.
4. Information identifying a victim and contact information for a victim, as well as information relating to another client of the Department (including a prisoner, resident, or adult or juvenile community corrections client), contained in a Department record shall not be disclosed to anyone other than a Department employee and shall be redacted from a record prior to its disclosure to anyone other than a Department employee, unless, after consultation with the Department's legal representative in the Attorney General's Office, it is determined necessary that the information be included.
  5. In this policy and procedures, a guardian does not include a guardian ad litem, the Superintendent, or any other Department employee, except as set out in Procedure B.1.

If there is any concern regarding a request to disclose records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

#### **Procedure B: Special Rules**

1. If a resident is being released to supervision by the Department in the community, a summary of the resident's health care information may be disclosed to Juvenile Community Corrections staff authorized to receive such disclosure by an Authorization for Disclosure of Discharge Planning Information by the Department of Corrections form (see Attachment A1) signed by the resident and signed by the resident's parent or guardian if the resident is a minor or if the resident is 18 years of age or over and has a guardian, for the purpose of facilitating case planning and supervision in the community. For the purpose of this procedure only, the Superintendent is the guardian of a resident who is a minor.
2. The following types of records and information may be disclosed only to Department of Corrections employees if, but only if, such disclosure is necessary to carry out a statutory function of the Department. Such records or information may not be disclosed to or discussed with the resident. They may not be disclosed to or discussed with anyone other than a Department employee, not even persons or agencies providing services to resident(s) by agreement with or under contract to the Department, another state agency, criminal justice agency, or a court, except that a victim's request for notice of release may be discussed with the office of the prosecuting attorney that processed the request.

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- a. information obtained for the purpose of evaluating a resident's ability to participate in a community based program, such as community sentiment information;
  - b. information obtained from informants in connection with the possible or actual violation of facility rules; and
  - c. a victim's request for notice of release.
3. The results (whether positive or negative) of an HIV test may be disclosed only:
- a. to the resident tested;
  - b. to a person or agency authorized to receive those results by an Authorization for Disclosure of Information Acquired by Virtue of HIV Testing (AIDS Testing) by the Department of Corrections form signed by the resident tested (regardless of if the resident is a minor or has a guardian); (Attachment B)
  - c. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
  - d. to the Bureau of Health; and
  - e. to Department of Corrections employees, provided that the recipient is authorized to receive those results (see Person and Agencies Authorized to Receive HIV Test (AIDS Tests) Results by the Commissioner of Corrections - Attachment B1).
4. The disclosure of information acquired during the provision of substance abuse treatment services by substance abuse treatment staff must be accompanied by the notice required by federal law, Notice to Accompany Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services. (Attachment C)

Information acquired during the provision of substance abuse treatment services by substance abuse treatment staff may be disclosed only:

- a. to the resident who received the substance abuse treatment services;
- b. to any person or agency authorized to receive such disclosure by an Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form (Attachment D) signed by the resident, if the resident is 18 years of age or over and does not have a guardian;
- c. to a parent or guardian of the resident, if the resident is a minor and if the parent or guardian requests such disclosure and the resident has consented to the disclosure by signing an Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form;
- d. to any person or agency authorized to receive such disclosure by an

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Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form signed by the resident, if the resident is a minor;

- e. to the guardian of the resident, if the resident is 18 years of age or over and has a guardian and if the guardian requests such disclosure;
  - f. to any person or agency authorized to receive such disclosure by an Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form signed by the guardian, if the resident is 18 years of age or over and has a guardian;
  - g. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
  - h. to the Department of Health and Human Services if, but only if, the information disclosed consists solely of a report of suspected child abuse or neglect;
  - i. to medical personnel if, but only if, the information disclosed is needed by those personnel so that they can treat a condition which poses an immediate threat to health and which requires immediate medical intervention;
  - j. to a criminal justice agency if, but only if, the information disclosed consists of information about a crime or juvenile crime committed or threatened to be committed during the course of substance abuse treatment or against substance abuse treatment staff; and
  - k. to persons engaged in auditing or program evaluation, if approved by the Commissioner, or designee, and if identifying data is not disclosed by the auditors or evaluators.
5. Department school records may be disclosed to the Superintendent of a resident's school or a school to which the resident is seeking admission and the Superintendent's designees, provided that in the case of a resident who is a detainee and against whom a petition charging the resident with a juvenile crime has not been filed, written consent is obtained from the resident and the resident's parent or guardian.
6. Information relating to pregnancy or a sexually transmitted disease may not be disclosed to a parent or guardian unless the resident has consented to the disclosure by signing an Authorization for Disclosure of Information by the Department of Corrections – General form. (Attachment A)
7. In relation to a fugitive (a person who has escaped or has been erroneously released from Department custody), the following information may be disclosed to a criminal justice agency:
- a. all juvenile crime(s) for which the client is currently incarcerated;
  - b. the disposition(s) received (including any conditions of probation);

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- c. the date of the client's projected release from custody;
- d. name and aliases;
- e. birth date;
- f. physical description of the client (e.g., sex, race, height, weight, build, eye color, hair color, scars, marks, tattoos, glasses, facial hair);
- g. photo or fingerprints taken at the direction of a criminal justice agency;
- h. the fact that the person is a fugitive; and
- i. the place and time the person escaped or was erroneously released.

In addition, there may be disclosed to the criminal justice agency any information about the fugitive which may be disclosed to such an agency under the other provisions of this policy.

8. The following information may be disclosed to the United States Immigration and Customs Enforcement in relation to a resident who is an alien:
  - a. name and aliases;
  - b. birth date;
  - c. physical description of the resident (e.g., sex, race, height, weight, build, eye color, hair color, scars, marks, tattoos, glasses, facial hair);
  - d. photo or fingerprints taken at the direction of a criminal justice agency;
  - e. the facility at which the resident is housed;
  - f. the fact that the resident is an alien;
  - g. the date(s) of the resident's detention or commitment to the custody of the Department of Corrections;
  - h. the relevant court(s) and docket number(s);
  - i. the dates of the resident's projected release and current release from institutional confinement; and
  - j. the country of the alien's citizenship.
9. Police reports relating to a resident may be disclosed only:
  - a. to a criminal justice agency (at the federal, state or local level or at any level of the Canadian government) if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment; and
  - b. to the Department of Health and Human Services if, but only if, such disclosure is necessary to carry out child or dependent adult protective services.

10. In relation to a resident who is seeking employment eligibility verification, applying for identification, or applying for MaineCare or Social Security benefits,

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the following information may be disclosed, using the Authorization for the Disclosure of Information for the Purpose of Identity Verification form (Attachment E) and the Identity Verification Information form (Attachment F), to U.S. Citizenship and Immigration Services, Maine Secretary of State's Office (Division of Motor Vehicles), the resident's employer, the Maine Department of Health and Human Services and Social Security Administration, as applicable:

- a. name and aliases;
  - b. date and place of birth;
  - c. parents' names (if the resident is a minor);
  - d. social security number (and other social security numbers used);
  - e. citizenship status;
  - f. physical description; and
  - g. photo and signature.
11. The following information may be disclosed to any state or federal agency in relation to a resident for the purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency:
- a. name and aliases;
  - b. date of birth;
  - c. social security number;
  - d. eligibility number for a federally funded service;
  - e. dates on which a federally funded service was received; and
  - f. other information required for and to be used solely for audit or research purposes for those services provided by or through the Department.
12. Screening and assessment tools, including, but not limited to, substance abuse screening and assessment instruments, education and vocational assessments and tests, risk and needs assessment instruments, and health care screening and assessment instruments, may be disclosed only to:
- a. Department employees or persons or agencies providing services to resident(s) by agreement with or under contract to the Department; and
  - b. a Maine state agency if, but only if, such disclosure is necessary to carry out a statutory function of that agency.
13. If the resident is a detainee against whom a petition has not been filed in court, Department school records may be disclosed to the Superintendent of the resident's school and the Superintendent's designees pursuant to an Authorization for Disclosure of Information by the Department of Corrections form signed by the resident and, if the resident is a minor, by the resident's parent or guardian (Attachment A). Otherwise, records and information

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pertaining to a resident against whom a petition has not been filed in court may not be disclosed except after consultation with the Department's legal representative in the Attorney General's office.

14. If the resident is one against whom a petition has been filed in court, any court order pertaining to the resident may be disclosed to a criminal justice agency if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment. The order may also be disclosed to the Department of Health and Human Services if, but only if, such disclosure is necessary in order for that agency to carry out a statutory function.
15. If the resident has been adjudicated of a juvenile crime, any court order pertaining to the resident may be disclosed to the Superintendent of the resident's school or a school to which the resident is seeking admission and the Superintendent's designees and to agencies that are or might become responsible for the health or welfare of a resident, if the information is relevant to and disseminated for the purpose of creating and maintaining an individual plan for the resident's rehabilitation, including, when the resident is reentering school, reintegration into the school.
16. Intelligence and investigative records are considered operational records and not resident records. Intelligence and investigative information is generated in an effort to anticipate, prevent, detect, monitor or investigate known, suspected or possible criminal or juvenile criminal activity. This includes, but is not limited to, records concerning possible criminal or juvenile criminal activity, informant information, security plans and practices, critical incident plans and practices, investigative techniques and practices, and any information that would endanger safety if disclosed. Information contained within these records may be disclosed only:
  - a. to employees of the Department and persons or agencies providing services to resident(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections;
  - b. to a criminal justice agency if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;
  - c. to the Department of Health and Human Services for use in the investigation of suspected abuse or neglect of a child or dependent adult;
  - d. to any person authorized to receive such disclosure by a court order after consultation with the Department's legal representative in the Attorney General's office;
  - e. to a resident accused of a crime or juvenile crime or to the resident's attorney or, if the resident is a minor or the resident is 18 years of age or

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over and has a guardian, to the resident's parent or guardian, if, but only if, it is for trial/adjudicatory or sentencing/dispositional purposes and the resident is authorized to receive such information by the court or the prosecuting attorney in charge of the matter after consultation with the Department's legal representative in the Attorney General's office;

- f. to a victim after consultation with the Department's legal representative in the Attorney General's office.
  - g. to a court after consultation with the Department's legal representative in the Attorney General's office; and
  - h. to any other person or entity if, but only if, necessary to conduct an investigation of criminal or juvenile criminal activity.
17. If the resident is the subject of a court-ordered forensic evaluation, upon receipt of a copy of the court order and a written request from the court-appointed evaluator, the resident's Department records and third party records, as requested, shall be provided to the evaluator. If it appears that the evaluator is requesting records that are not relevant to a forensic evaluation, the request shall be referred to the Department's legal representative in the Attorney General's office.

If there is any concern regarding a request to disclose records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

#### **Procedure C: Rules for Obtaining Information**

1. Third party records and information, including substance abuse diagnosis, evaluations, treatment reports and discharge summaries, mental health diagnosis, evaluations, treatment reports and discharge summaries, educational records, and other records generated by third parties may be obtained for one or more of the following purposes:
  - a. to facilitate case planning and management of the resident; and
  - b. to assist the resident in obtaining SSI/SSDI upon release.
2. Third party records and information shall be obtained by using the Authorization for the Disclosure of Information to the Maine Department of Corrections form (Attachment G). If the third party requires the use of its own consent form, the third party's form shall be completed, in addition to the Department's form.
3. The form is to be signed by the resident. Except in the case of substance abuse information, HIV test results, and information relating to pregnancy or a sexually transmitted disease, if the resident is a minor or is 18 years of age or over and has a guardian, the form is also to be signed by the resident's parent or guardian.
4. In a case in which a parent or guardian refuses to sign a consent form allowing the obtaining of third party records and information necessary for one of the

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purposes set out above, the matter shall be referred to the Department's legal representative in the Attorney General's office.

5. Third party records and information may be disclosed to employees of the Department and persons and agencies providing services to resident(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out one of the purposes set out above. If a third party record or information is obtained to assist the resident in obtaining SSI/SSDI upon release, the information may also be disclosed to an agency or an administrative hearing officer reviewing the application for SSI/SSDI.

If there is any concern regarding a request to obtain third party records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

#### **Procedure D: Acknowledgement of Confidentiality of Information**

1. All facility staff, whether Department employees or persons working at the facility under contract to or by agreement with the Department, and Central Office staff shall be provided a copy of this policy.
2. Each staff member shall acknowledge in PowerDMS that he or she has received and read the policy.
3. If a staff member has any concern about this policy or the law relating to confidentiality of resident information, it is the staff member's responsibility to use the appropriate channels to have the concern referred to the Department's legal representative in the Attorney General's office.

## **VII. PROFESSIONAL STANDARDS**

ACA:

**4-JCF-6F-01 Juvenile case-record management Includes, at a minimum, the following:**

1. Establishment, use, and content of case records
2. Signed and dated entries in the case record
3. Maintenance, secure placement and preservation of records to minimize the possibility of theft, loss, or unauthorized destruction of records
4. Schedule for retiring or destroying inactive records
5. Safeguards from authorized and improper disclosure
6. Security, which ensures confidentiality for any part of the information system that is computerized
7. A "release of information consent form" that complies with applicable federal and state regulations, a copy of which is maintained in the case record.

Employees, consultants, and contract personnel are informed in writing about the facility's policies on confidentiality of information and agree in writing to abide by them.

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